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A change of heart: retraction and body

Marie-Andrée Jacob and Anna Macdonald



[Fig 1 Film still from *Walk (strikethrough with pen)* 2016: Anna Macdonald]

Our intervention stems from a shared interest in lines as material, somatic and metaphorical forms.¹ The line that we interrogate is the ~~strikethrough~~: the line superimposed upon text in order to retract a meaningful or weighty statement in particular legal proceedings. We ask what this seemingly simple device of erasure can reveal about the transparent retraction of a statement, and its place within a *dispositif* attributed to law. Taking note of the editors' explicit injunction not to necessarily equate the material with the physical, we mine the artefactual qualities of the typographical line of strikethrough: to us it constitutes a digital device, physical mark and affective embodied force. A device, a mark, a force: these are precisely what make the strikethrough a material of sort. We use materials to explore materials. We do this by bringing together socio-legal analysis and embodied practice-based research, using Macdonald's moving image artwork *Walk (strikethrough with pen)* (2016) to refine how strikethrough registers as a distinctive legal material. Operating differently from the editors (Kang and Kendall 2019), in our paper we do not interrogate the potential theoretical ramifications of particular definitions of materiality; nor do we apply a particular theoretical understanding of materiality in order to explore a device. Our knowledge of materiality stems directly from our concern with the typography, affective force, and tangible effect manifested by the strikethrough itself. In other words, the strikethrough is not an illustration of our pre-selected theoretical position; it

is the essential ground of our collaboration and theoretical endeavor. In a way, our position takes after, or mimics, the strikethrough: it is a gesture, and is what it does. The following pages introduce and meditate on the implications of this position. We elaborate on how the strikethrough draws its legal attribute from the fact that it is an agreed upon and consequential procedure. We do not take materiality or legality as pre-givens, but instead use our distinctive lenses of law and dance in order to glean potential meanings out of the affective charge of the corporeal anchor of a digital line that strikes through text.

Initially Jacob (2016) used the format of a *Legal Studies* article to examine the place of the strikethrough within the recent expansion of transparency effects enacted by the law (Mayler 2012: 135), focusing on state-governed professional regulation. This article identified strikethrough as a discrete pattern used in published decisions of a disciplinary tribunal, the General Medical Council, in order to visibly remove heads of charge against individual doctors during Fitness to Practice adjudication. The strikethrough acted as a device enabling the regulatory functions of transparency, authentication and individuation within the Council, at a time when it was responding to a higher degree of scrutiny by the state and thus looking for ways to finesse its decision-making activities. In Jacob's view, the strikethrough also emerges as a metaphor when the Council deploys it as part of its incremental arsenal of sentences: in the most serious cases, a doctor can be struck off the medical register, that is, have its name removed from the list of doctors registered to practice medicine in the UK. The strikethrough travels through regulatory apparatus, whether it literally crosses a name or not. Either way, the strike scars and lasts. The Council also produced a discourse around strikethrough. Given the normative primacy within the medical domain of leaving a trace of one's correction of records, the Council used the strikethrough itself to flesh out in practice how research probity by doctors can be expressed in material ways, by '[P]utting a line through the original record and adding correction is the appropriate way to correct so that it remained available for all to see.' (GMC, Fitness to practice panel, 2012). The various ways strikethrough could be enlivened within a single institution immediately speaks to its rich multi-valence and evocative power. Indeed it is just one in a series of erasure devices that have sparked the imagination of other scholars and artists lately.²

To Barthes writing is a practice that betrays nostalgia for the natural individual body (Goldberg 1990: 292). In hindsight, we notice that Jacob's *Legal Studies* paper relied on writing words on paper to conjure the embodied and temporal nature of the act of strike through. For example, the article intently imagined the purposeful movement of a hand drawing but also the short, scratchy, and strident encounter of being hit by a line. But ultimately it 'digressed,' (Wagner 2010) or bifurcated, from this embodied imagination to using solely the medium of writing. Writing does preserve life, but always moves us away from it.³ Words can only get you so far. The strikethrough of *Legal Studies* made the involvement of movement almost impossible to avoid. In other words, the strikethrough was itself a call for a practitioner's input for it needed not further description, but parallel discovery, reappropriation and deployment within a performative terrain. It made inevitable and led, in this case, to a bond between law and dance, and in 2016 Macdonald made a series of artworks in response to Jacob's *Legal Studies* text.⁴

The work we focus on here (available at <https://vimeo.com/170150150>) is titled *Walk (strikethrough with pen)*,⁵ and consists of a single static wide-shot of a woman walking alone across an open, flat landscape.⁶ The woman walks ceremonially from one side of the screen to the other holding on tightly to a bunch of white papers that are being blown by the wind. The image of the woman walking is overlaid by a shot of a hand drawing a line across a page, and so it looks as if the woman is walking upon a thick sheet of paper. As the pen-drawn line goes through her, the digital film is slowed down momentarily then returns to normal speed as she carries on walking. The third time she is struck through by the line, the woman remains still under its mark.

Macdonald's artwork is a performative analytical object in that it both represents and is an act of strike through. In other words the artwork uses the form to analyse the affective charge of the form. *Walk* takes the paper, the pen, the movement of striking, the body that is striking, and the body being struck, and performs them all in time.⁷ The term 'performance' evokes something disingenuous or insincere. Here, however the film 'performs' in the sense that it imagines the physical root of the typographic device. It places the body in one timeframe, pen on paper in another, and then places them, just as the strikethrough does, in the same object or event (the film). In animating the temporal, embodied aura of strikethrough it encourages, what Mark Hansen

articulates as, a shift from 'abstract time consciousness to embodied affectivity' (Hansen 2004: 589) in the viewer. A significant part of this shift is located in the work's invitation to the viewer to experience the kinesthetic (felt sense) effect of the movement of strikethrough. This is how this artwork knows and communicates. These moving images constitute the strikethrough itself and are the result of an engagement with strikethrough. In other words, the moving image is both a representation of crossing out, and a crossing out in itself: it is the very thing that it points to. This constitutive power is not unfamiliar to that of an autopoietic version of law that makes objects, which it then purports to only describe.

Initially we presented our respective projects side by side, letting each one resonate with rather than explain the other.⁸ Here we build on this initial approach by working in iterative cycles that involve: examining the strikethrough as material, performing that material using the body on film, thinking about what that tells us about legal materiality, and then what this tells us about a certain assemblage of power. Whilst doing this we insist on letting the strikethrough be a *sui generis*, leading the terms of analysis rather than immediately become an illustration or placeholder of something else (Henare, Holbraad and Wastell 2007). Bringing the embodied practice of dance, with its distinctive emphasis on what somatic scholar Parviainen refers to as 'knowing in and through the body' (Parviainen 2002: 11), to the socio-legal study of material forms does not generate singular propositions in response to a singular question. Instead it pools insights concerning the temporal and embodied nature of strikethrough. These insights interrogate the relation between law and the body, enrich the object of study, and may engender other artefacts.

A change of heart

Strikethrough makes a change of heart transparent. It gives a pattern to *epanorthosis*, which is an emphatic word replacement in a text, indicating an explicit change in the intention of the writer.⁹ It performs a retraction, in other words the tribunal, decision-maker, or arbitrator's affirmation that something 'was definitely true, for all time, and now it's no longer true.' The strikethrough could also indicate that there has been a mistake. It speaks of the person behind the act and the body named in legal claims. *Walk* shows the strikethrough enacting a decision by an entity



[Fig 2 Film still from *Walk (strikethrough with pen)* 2016: Anna Macdonald]

or individual, which is then changed. The woman walks and then someone decides that she should not. Perhaps her walk is seen as an error to be corrected or is invalid in some way?

In the film the hand that strikes is easily imagined, for we see how long it takes for a hand to perform the act and respond empathetically to the kinaesthetic quality of the action. The sensed quality of the hand's movement leads us to speculate about the durational, emotional quality of that change of heart. How long did it take to make the decision to perform the act? Is the action impetuous and hot-headed, or is it calmly decisive, enacting a final judgment made after extensive legal hesitation (Latour xx) and deliberation? That part before the movement of judgement always stays outside the edge of the page, or screen (de Certeau xx, Veyne 1971). As a way to overwrite (Ingold 2019) strikethrough can be prompt and whimsical, or carefully decisive, but we feel it always contains a violence of sort in this film, which our bodies respond to. It is a judgement that befalls the walking woman, which she has no agency over.¹⁰ Although we know that the walking woman will not actually be hurt by the line, there is a disturbing sense that she could be.¹¹ The kinaesthetic effect of the strikethrough in *Walk* reminds us of the threat of retraction as the embodied effect of the law. It can also evoke a future ban. We recoil at the moment of strike and anticipate it happening again.

For us the strikethrough registers as legal material not necessarily because of its inherent properties but because of its moment-bound enactment: it acquires legal meaning at that very moment when the streak hits the surface, the *point de non-retour*, which only the film could help us demonstrate.

The constancy of the spectre of sentencing, like a sword of Damocles, is a significant quality of law. A sword is hanging, which makes things unpredictable, but that unpredictability is itself constant. That is not to equate law with absolute sovereign power. There are institutions, procedures, conventions and collective decisions in place, and the *Legal Studies* paper (2016) elaborates on the institutional, evidential, discretionary and informal aspects of the Council decisions. We're not reiterating them here because our concern lies elsewhere. Indeed our interest is in the moment of change when the law strikes, not in the individual or collective decision-making process that precedes the moment of strike. No amount of interactions, balancing exercises and hesitation before a decision is reached will make that very moment of strike less impactful. This moment of change has a lot to offer analytically. We note that the woman in the film has a heroic quality for she prevails against the forces of nature as the wind howls and the uneven earth threatens to unbalance her. The image is classical, timeless, in the sense of a narrative of persistence shown against the unstable, yet constant, conditions. Changes of heart, on the other hand, can be in-the-meantime or true for now, indeed just like Heidegger's concept of ~~sous-rature~~ reintroduced by Derrida. (Spivak 1998) However what we see in the film is not a temporary fix, or an exceptional derogation in-the-meantime; it is drawn as a permanent alteration. The movement of time is enacted and then frozen with the strike through: the film acknowledges that something has changed but this change is then positioned as unchanging and permanent.

The change of heart within strikethrough exists accompanied by a logic of transparency, as the strikethrough divulges the process of correcting, as well as the state of affairs prior to the correction as a result of the correction. By making the change of heart overt, the strikethrough points to the mutability of law, the embodied, subjective, mortal form of law-making's effect at the moment of impact.

We are also mindful here that the body in *Walk* is a digital image of a body, just as strikethrough predominantly takes a digital form in legal procedures. As we look at *Walk* we are wary of our findings, because we know that it could be an hour longer or cropped, or differently coloured, for digital forms allows for a kind of regenerative, fluid reversibility – where decisions are entirely revocable.¹² Although the digital process of striking through might invite a sense of reversibility, the hand drawn, or printed, strikethrough does not. The drawn pencil line (as opposed to the digital line) offers a particularly determined and inexorable change of heart, like falling out of love: once drawn it is over, more over than anything digital will ever be over. Once paper is imprinted upon, it remains so.

Even if both the strikethrough form and *Walk* exist digitally, they also both refer to an imagined embodied aura of the hand drawn line. For example, the use of an unedited single shot of the body moving in time in *Walk*, emphasises the durative nature of the original event, maintaining an analogue style connection to the live body in time (bound to its time of production) (Macdonald 2017). The line that strikes the walking woman is digital, but it is a digital trace of a singular hand-drawn line, which can be replayed or deleted but not re-drawn.¹³ In a similar way strikethrough does not erase or conceal moments of time for, unlike other modes of redaction like digital deletion or blackout, it works against the grain of digital editing. In this sense the film shows how legal meaning can be attributed to the strikethrough. It shows how the strikethrough clings to a version of change in law that is visible, and thus particularly burdening. Typographically it could be reversible of course; however under what is taught in law schools as the rule of law, once speech is visibly printed or erased, then the law is bound. Under criminal procedures for instance, natural justice and the duty of act fairly require that if a visible charge gets withdrawn, it cannot be put back again. Similarly, prosecutors normally cannot overturn a decision not to prosecute.¹⁴ That is not to say that all legal procedures are transparent of course,¹⁵ but when the law makes itself visible by erasing a mark, it is bound. The line in film can be changed (deleted, reversed) whereas in law it's possible but more difficult to do so.

Because it evokes a particular movement in time, the strikethrough remains intentionally alive, repeatedly performing its action upon a person or judgment. Because they remain alive under the line, this person or judgment are not gone, they

remain visible. Would they be deleted or sent to the shredder, their intensity would materialise differently. The walking woman manages to keep moving through the first two strikes but remains still under the third. The line appears to stop her progression but not her movement.¹⁶ She is not dead, or digitally stilled, she goes on but remains pinned by this line. What was once is now irrevocably negated, killed, but not completely erased. So the film also helps in discerning the intensity of our legal material. As Tim Ingold (2017) commented:

“the interesting thing is that the slice is longitudinal rather than lateral – along the grain, so to speak. [...] think of slicing timber with an axe (as opposed to cutting across the grain with a saw). The axe passes in an instant through material that has taken years to grow. But with split timber, you can still use the pieces. By contrast, lines of writing split lengthwise are not decomposed into their elements (words or letters) but killed off, like the body with a samurai sword. The writing is killed without being erased.”¹⁷

Being killed does not mean being less impactful, as Jean-Michel Basquiat puts it: ~~“I cross out words so you will see them more; the fact that they are obscured makes you want to read them.”~~ (Rubinstein 2018: 21) As to the woman walking, she stays as a remnant. Sliced, she is left as an example, or more aptly as exemplar, for others. Indeed struck through text acts like a warning: this could happen to you, to your truths, legal or otherwise. It resonates with the use of strikethrough in early medieval texts where it signified emphasis alike the modern underline or highlight (Rubinstein 2018).

We notice in current research a fascination with the material and yet a palpable fear of tangible things. This is the case despite an abundant literature written on tangible things. We surmise that is because academics, us included of course, share a fundamental fear from and lack of trust in the un-wordy world of human (or animal) bodies and their movements. More so there does not seem to value accorded to something outside of a rigorously premeditated association with them. Chance encounters, we find, are ruled out.¹⁸ (Ravetz and Gregory 2018) So we gleaned and fumbled back and forth between us and between words, gestures and images, hopeful to further differentiate what it means to effectuate a visible change of heart within law. The paper gives only a preliminary account of our gleaning and fumbling around

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retraction and using the body's movements and images. It opened a number of questions related to retraction as a form of change in time, which materializes in the body and in law. Mostly with the paper we began to understand a little more how come such a simple line caught our legal/dance studies and especially sensitivities, and why this line will keep us going.

References

- De Certeau M 1984 *The Practice of Everyday Life*, Berkeley, University of California Press
- Fraleigh S 2015 *Moving Consciously: Somatic Transformations through Dance, Yoga, and Touch*
University of Illinois Press Chicago and Springfield.
- General Medical Council, Fitness to Practice Panel, now Medical Professional Tribunal Service,
available at <https://www.mpts-uk.org/hearings-and-decisions>
- Goldberg J 1990 *Writing Matter: From the hands of the Renaissance*, Stanford University Press.
- Hansen M 2004 'The Time of Affect, or Bearing Witness to Life' *Critical Inquiry* 30/3: 584-626
- Henare A., M Holbraad and S Wastell eds. 2007 *Thinking Through Things: Theorising Artefacts Ethnographically*, Routledge.
- Ingold T 2017 response to *Walk*, personal communication.
- Ingold T, 2019 'Strike-through and wipe-out: tactics for overwriting the past,' abstract, Society for Ethnography and Folklore meeting.
- Ingold, T. 2013. *Making: Anthropology, Archaeology, Art and Architecture*. Routledge.
- Jacob M 2017 'The strikethrough: an approach to regulatory writing and professional discipline' *Legal Studies* 37/1: 137-161
- Macdonald A 2016 *Walk (strikethrough with pen)*
- Macdonald A 2017 'Going Nowhere: Screendance and the Time of Dying' *The International Journal of Screendance* 8: 11-28
- Mackay R ed 2011 *The Medium of Contingency* Urbanomic and Ridinghouse London
- Mackay R 2011 'Introduction: Three Figures of Contingency' in Mackay ed 2011: 1-8.
- Mayler 2012 'Wilkie Collins's Law Books: Law, Literature and Factual Precedent' in Sarat A and M Umphrey M and L Douglas *The Secrets of Law*, Stanford University Press.
- Messick B. 1992, *The Calligraphic State* Berkeley: University of California Press.
- Parviainen P 2002 'Bodily Knowledge: Epistemological Reflections on Dance' *Dance Research Journal* 34/1: 11-23.
- Ravetz A and H Gregory 2018, 'Black gold: trustworthiness in artistic research (seen from the sidelines of arts and health) *Interdisciplinary Science Reviews* 43/3-4: 348-371.
- Ravetz, A 2011 'Both created and discovered: the case for reverie and play in anthropology' in Ingold T *Redrawing Anthropology*, Oxford: Berg
- Riles A 2016 'Afterword: Method more than a Subject' in Cowan D and Wincott D *Exploring the Legal in Socio-Legal Studies* Palgrave 357-364
- Rubinstein, R 2018, Missing: ~~erasure~~ Must include: erasure, *Under ~~erasure~~* exhibition, curated by Raphael Rubinstein, Pierogi Gallery, 2018, www.under-erasure.com
- Wagner, R 2010 'Depersonalising Digressions' paper available through *Writing Across Boundaries*, University of Durham Department of Anthropology.

Veyne P 1971 *Comment on écrit l'histoire*, Paris, Seuil.

Spivak G, 1998 Translator's Introduction to *Of Grammatology*, John Hopkins University

Latour B and C Venn 2002, 'Morality and Technology : The End of the Means' *Theory Culture and Society*

Endnotes

¹ For example, lines can be conceived in terms of guidelines as a normative, regulating practice within Western legal systems, or lines of communication within unilateral or reciprocal relationships. Lines are also an integral part of dance practice within the actual/virtual shapes of the body and its movement through space. What interests us are the overlaps such as: the vertical lines of an 'upright' citizen or the somatic concept of moving along 'lines of least resistance' (Fraleigh 2015:229) which evokes moments when law-abiding citizens follow default rules, as a way to stay in line with norms.

² Under Erasure, curated by Raphael Rubinstein, Pierogi Gallery, 2018, www.under-erasure.com

³ Messick reports that to Charia scholars writing is both a 'safeguard', as it permits the preservation of life, memory, speech, event, and dangerous, as 'it harbors within a separation and a threat of falsehood.' (1992: 213)

⁴ Here the insights from legal ethnography are particularly apt, as one learns to be led by one's terrain, and to have the deliberate resolution 'to risk common scholarly sense to place the intellectual reins in the hands of one's subject' (Riles 2016: 260) here the strikethrough itself.

⁵ Referred to as *Walk* from this point

⁶ The woman in the film is Macdonald, and the footage of her walking comes from an earlier film entitled *Walk* (2016). We refer to her in the writing as the 'woman' because here Macdonald represents a woman as well as 'being' one. Without assuming a distinction between bodies of persons, animals or inanimate objects, we are happy to settle here on assumptions regarding her individuality and gender, as we try to open up the meanings attributable to an embodied contact with a line that strikes.

⁷ Of course the film can only conjure an affective connection with the original time of the event: the time when the film was made is different from the time when we see it now, and from the time when the viewer reads this and watches *Walk*. That conjuring is a usual constraint (and possibility) of working with words, as Jacob's article showed. It is also found again in this short article with the inclusion of still images of the moving image film.

⁸ 'Striking through: writing practices and the discipline of research' at Arts and Medical Humanities: *Dangerous Currents: Risk and regulation at the interface of medicine & the arts*, Dartington, 23rd-25th June, 2015.

⁹ For example, 'History is modulated, no, mutilated, by documents!' (Veyne 1984: 13)

¹⁰ 'Contingency' comes from *contingere*, meaning 'to befall' – it is an event that happens to us, that comes from outside, that simply 'strikes' without any possible prevision. (Mackay, 2011:1).

¹¹ The mute digital strikethrough is haunted by the ghost of the sound of strikethrough in pen or pencil. We remain very aware that by using film we remain within the realm of the imagination of the physical root of strikethrough; however what we are after is precisely that imagined physical root, a somatic response, which to us is a significant element of the effectiveness of strikethrough.

¹² In the software used to generate *Walk* (Final Cut Pro) this process is called non-destructive editing, where nothing is lost.

¹³ To make *Walk (strikethrough with pen)* the action of drawing a line on paper was filmed and then this footage overlaid onto existing film of a woman walking.

¹⁴ 10.1 People should be able to rely on decisions taken by the CPS. Normally, if the CPS tells a suspect or defendant that there will not be a prosecution, or that the prosecution has been stopped, the case will not start again. But occasionally there are cases where the CPS will overturn a decision not to prosecute or to deal with the case by way of an out-of-court disposal or when it will restart the prosecution, particularly if the case is serious: The Code Crown Prosecutors 2018 -- for consultation. Available on line: <https://www.cps.gov.uk/publication/code-crown-prosecutors-2018-consultation>

¹⁵ Many complaint processing and triage procedures, such as those of the Director of Public Prosecution or the General Medical Council, remain opaque.

¹⁶ Strikethrough has the temporality of a kind of GIF (Graphics Interchange Format) endlessly moving but not progressing.

¹⁷ Tim Ingold, response to *Walk*, personal communication, May 2017.

¹⁸ 'Though artistic researchers need to understand the rigour concept, by contrast, artistic research as a kind of thinking through making (Ravetz, 2011, 159; Ingold, 2013, 6), places value on improvisation, chance encounter, unforeseen admixture and the in-and outward-folding of process, affect and material.' (Ravetz & Gregory 2018: 349)